

RICHARD M. LADE, AS ATTORNEY IN FACT  
FOR SANTA FE PACIFIC RAILROAD COMPANY

IBLA 70-5

Decided December 29, 1970

Exchanges: Forest Exchanges -- Scrip: Recordation -- Scrip: Special  
Types of Scrip -- Scrip: Validity

A forest lieu selection right is extinguished when the base lands are reconveyed by the United States to the principal. The purported agent or assignee of the principal has no rights thereafter against the United States even if he recorded his power of attorney and other selection documents prior to the reconveyance.

RICHARD M. LADE, AS ATTORNEY IN FACT : Forest lieu selection  
FOR SANTA FE PACIFIC RAILROAD COMPANY : application rejected,  
: appeal dismissed  
  
: Affirmed

## DECISION

Richard M. Lade, as Attorney in Fact for the Santa Fe Pacific Railroad Company, has appealed to the Secretary of the Interior from a decision by the Chief, Branch of Land Appeals, Office of Appeals and Hearings, Bureau of Land Management, dated January 29, 1968, which dismissed his appeal from a Portland land office decision of January 11, 1957, rejecting his forest lieu selection application as being invalid.

Appellant's selection right is based upon the same lands used by him to support a previous selection application, Oregon 011228. By departmental decision, Richard M. Lade, as Attorney in Fact for Santa Fe Pacific Railroad Company, A-29121 (January 10, 1963), that application was rejected and the selection right was declared invalid because the lands upon which the selection right is based (the NW 1/4 sec. 27, T. 22 N., R. 9 E., G.&S.R.M., Arizona) had been reconveyed to the Santa Fe Pacific Railroad Company by a quitclaim deed dated June 27, 1956, thus extinguishing any selection right in lieu of those lands. The Chief, Branch of Land Appeals, held that the identical issue as to the validity of the selection right was decided by the previous decision.

Appellant contends basically that the selection right was assignable and his right to exercise it must be recognized regardless of the reconveyance of the base lands to his principal. At appellant's request, action on this appeal has been delayed pending court review of the previous departmental decision (A-29121). The United States Court of Appeals for the Ninth Circuit in Lade v. Udall, Civil No. 23,355 (September 25, 1970), affirmed Lade v. Udall, 295 F. Supp. 265 (D. Ore. 1968), upholding the departmental decision (A-29121). It held that the United States is not required to recognize Lade as an assignee of the forest lieu selection right; that the reconveyance of the base lands extinguished any rights to

lieu selection; and that the fact that Lade had recorded the selection right documents pursuant to the Scrip Recordation Act of August 5, 1955, 69 Stat. 534, noted at 43 U.S.C. § 274 (1964), prior to the reconveyance was not significant as that act created no new obligation on the part of the United States to respect assignments so recorded or to deal with the purported assignees. 1/ The Court's ruling controls the disposition of this case.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision is affirmed. 2/

---

Joan B. Thompson, Alternate Member

I concur:

I concur:

---

Martin Ritvo, Member

---

Anne Poindexter Lewis, Member

---

1/ The court relied on its previous ruling in Udall v. Battle Mountain Company, 385 F.2d 90 (9th Cir. 1967), cert. denied 390 U.S. 257 (1968). A dissent by Judge Trask would distinguish the Battle Mountain case because the selection documents in Lade were recorded prior to the reconveyance whereas in Battle Mountain they were recorded after the reconveyance.

2/ In Richard M. Lade, as Attorney in Fact for C. W. Clarke Company, IBLA 70-4, decided today, another forest lieu selection application was rejected for the same reason.

